

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE:

MARTIN JAMES DEKOM, SR.

CASE NO.: 19-30082-KKS

CHAPTER: 13

Debtor.

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**ORDER DENYING DEBTOR'S *MOTION TO VACATE***  
***AND DECLARE VOID* (DOC. 93)**

THIS MATTER is before the Court on self-represented Debtor's *Motion to Vacate and Declare Void* ("Motion to Vacate," Doc. 93) and the response filed on behalf of Nationstar Mortgage, LLC d/b/a Mr. Cooper ("Nationstar").<sup>1</sup>

**BACKGROUND**

Debtor filed the petition commencing the instant Chapter 13 on January 23, 2019, shortly after his prior Chapter 13 was dismissed by the Bankruptcy Court for the Eastern District of New York.<sup>2</sup>

Debtor owns a single-family home located in Nassau County, New York.<sup>3</sup> That property is the subject of a final judgment of foreclosure

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<sup>1</sup> *Response to Debtor's Motion to Vacate and Declare Void* ("Response," Doc. 122). Debtor previously moved to strike Nationstar's Response (Doc. 124); the Court denied that motion on December 17, 2019 at Doc. 172.

<sup>2</sup> Doc. 12.

<sup>3</sup> Doc. 1, p. 11.

rendered on December 2, 2014 in favor of Nationstar by the Supreme Court of the State of New York.<sup>4</sup> In 2015, Debtor appealed the final judgment of foreclosure.<sup>5</sup> On May 16, 2018, the Appellate Division, Second Judicial Department, Supreme Court of the State of New York affirmed the final judgment on appeal.<sup>6</sup>

While his appeal remained pending in the New York state court, and about two years after the final judgment of foreclosure, Debtor commenced a multi-count civil action in 2017 in federal district court on behalf of himself and “the little people” against Nationstar and numerous others (“District Court suit”).<sup>7</sup> In that suit, Debtor named as defendants judges and court staff of the Nassau County Supreme Court of the State of New York and the New York Appellate Division, alleging that they engaged in an “illegal process,” “public corruption,” “legal weirdness,” and a host of other acts.<sup>8</sup> Ultimately, the district court found that the District Court suit was an inappropriate attempt to invalidate the final judgment of foreclosure, barred by the *Rooker-Feldman* doctrine and *res*

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<sup>4</sup> *Judgment of Foreclosure And Sale After Inquest and Appointment of Referee*, Doc. 84, p. 4.

<sup>5</sup> Debtor also appealed the trial court’s orders denying his motions to vacate the default entered against him and to vacate or stay the enforcement of the final judgment of foreclosure. Doc. 118, p. 56.

<sup>6</sup> *Id.*

<sup>7</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Docs. 1 and 144 (E.D.N.Y. June 27, 2018).

<sup>8</sup> *Id.*

*judicata*, and dismissed that action.<sup>9</sup> In April of 2019, Debtor moved for reconsideration of the district court's order adopting the R&R and dismissing the District Court suit;<sup>10</sup> in April and May of 2019, defendants filed responses in opposition.<sup>11</sup> Nothing further appears on the docket of the District Court suit until September 26, 2019, when the district court issued a Memorandum and Order ("Final Order") denying Debtor's motion to reconsider the dismissal of the case.<sup>12</sup> In the Final Order, the district court certified that "any appeal from this Order would not be taken in good faith."<sup>13</sup> Despite that certification, Debtor immediately filed an appeal with the Court of Appeals for the Second Circuit.<sup>14</sup>

In the Motion to Vacate at issue, Debtor claims that the district court's issuance of the Final Order violated the automatic stay and urges this Court to vacate the district court's Final Order. For various reasons, Debtor's Motion to Vacate is due to be denied.

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<sup>9</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 230, Magistrate Judge's *Report and Recommendation* ("R&R") (E.D.N.Y. Feb. 26, 2019); Doc. 234, *Order* [adopting R&R] (E.D.N.Y. Mar. 28, 2019).

<sup>10</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 235, *Notice and Motion to Reconsider Order Denying Equal Protection and Granting Motions to Dismiss* (E.D.N.Y. April 11, 2019).

<sup>11</sup> Doc. 122, p. 6.

<sup>12</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 249, *Memorandum and Order* (E.D.N.Y. Sept. 26, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 250, *Notice of Appeal* (E.D.N.Y. Oct. 21, 2019).

## DISCUSSION

### **The form of the Motion to Vacate is improper**

Debtor improperly filed the Motion to Vacate using the Court's negative notice procedures.<sup>15</sup> Motions to vacate are not among those permitted to be filed on negative notice.

### **The district court's issuance of the Final Order did not violate the automatic stay.**

The automatic stay is an injunction that becomes effective, as the name implies, automatically upon the filing of a bankruptcy petition.<sup>16</sup> The scope of the automatic stay is broad. Among other things, the automatic stay prohibits:

(1) the commencement or continuation . . . of a judicial . . . proceeding *against the debtor* that was or could have been commenced before the commencement of the case under this title, or to recover a claim *against the debtor* that arose before the commencement of the case under this title.

. . . .  
(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate . . . .<sup>17</sup>

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<sup>15</sup> N.D. Fla. LBR 2002-2 and the *Negative Notice List* posted on the Court's website.

<sup>16</sup> If a party has filed prior bankruptcy petitions, under certain circumstances the automatic stay does not become effective upon filing a subsequent petition. 11 U.S.C. § 362(c)(3)(A) (2019).

<sup>17</sup> 11 U.S.C. § 362(a)(1),(3) (2019) (emphasis added).

The Final Order issued by the district court does not constitute an act *against* Debtor; does not constitute an act to obtain possession of property of the estate or of property of the estate or to exercise control over property of the estate; and does not violate any other subsection of § 362(a). The Final Order was entered in an action initiated *by Debtor* asserting claims against others, and not vice versa.

Debtor incorrectly asserts that the entry of the Final Order effectively turned the R & R into a void or voidable final judgment against him. Courts have held that when a judge signs an order after a debtor files a bankruptcy petition, that act constitutes a judicial function which may qualify as a violation of the automatic stay *if it results in a judgment against the debtor*.<sup>18</sup>

Nothing in the district court's Final Order contains any language that would reasonably be construed as a judgment *against* Debtor, or a judgment to obtain possession or control of property from or of Debtor's bankruptcy estate.<sup>19</sup>

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<sup>18</sup> *In re Braught*, 307 BR 399 (Bankr. S.D.N.Y. 2004); *In re Fontaine*, 603 B.R. 94 (Bankr. D.N.M. 2019). A wholly ministerial act, which is essentially clerical in nature, is not a stay violation. *In re Fontaine*, 603 B.R. 94, 105 (Bankr. D.N.M. 2019).

<sup>19</sup> *See* 11 U.S.C. § 362(a)(1),(3) (2019).

After Debtor filed the instant Chapter 13 case, he continued to actively participate in the District Court suit by filing numerous pleadings.<sup>20</sup> At no time did Debtor file a Notice or Suggestion of Bankruptcy with the district court. The district court docket also shows that no defendant, including Nationstar, filed any pleading with the district court to trigger issuance of the Final Order.<sup>21</sup>

The district court's Final Order does not constitute a judgment against Debtor, his property or property of the estate within the contemplation and meaning of the automatic stay. Rather, the district court's Final Order denied Debtor's attempt, via a motion for reconsideration, to re-argue the dismissal of the District Court suit, thus clearing the way to close that case.<sup>22</sup>

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<sup>20</sup> Doc. 122, p. 6

<sup>21</sup> *Id.* The only pleadings Nationstar and other defendants filed with the district court after Debtor filed his motions for reconsideration and to compel were replies in opposition to Debtor's motions, all of which were filed on or before May 16, 2019. *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Docs. 235-248 (E.D.N.Y. April 2019). No party filed any other paper in the district court case prior to the district court issuing the Final Order. *Id.*

<sup>22</sup> Nothing before this Court shows that the district court was even aware that Debtor had filed bankruptcy. After Debtor filed the instant Chapter 13 case, he continued to actively participate in the district court case by filing numerous pleadings.

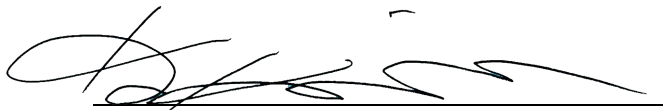
## CONCLUSION

There is no legal basis to find that the district court's issuance of the Final Order was a violation of the automatic stay.

For these reasons, it is

ORDERED: Debtor's *Motion to Vacate and Declare Void* (Doc. 93) is DENIED.

DONE AND ORDERED on January 21, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', is written over a horizontal line.

KAREN K. SPECIE  
Chief U. S. Bankruptcy Judge

cc: all parties in interest

Counsel for Nationstar Mortgage, LLC d/b/a Mr. Cooper is directed to serve a copy of this Order on interested parties and file proof of service within 3 days.